

Deschutes TMDL & Litigation

Background

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area is located in south Puget in Thurston and Lewis Counties, Washington. The Washington Department of Ecology submitted the final Phase 1 Deschutes TMDL to EPA for approval on December 17, 2015.¹ That document addresses a total of 73 waterbody-pollutant combinations, caused by temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment.

Litigation

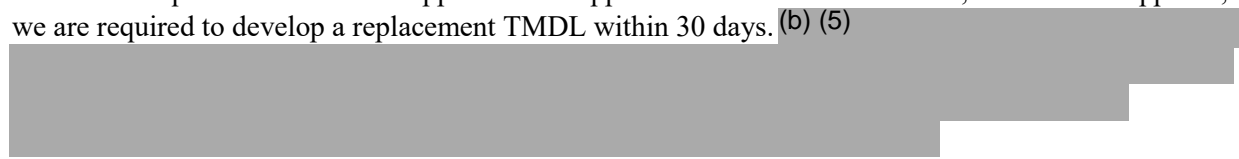
On September 6, 2017, Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the Deschutes River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state's TMDL submission within 30 days of submittal.

(b) (5)

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Current Status

The CWA requires EPA to either approve or disapprove state-submitted TMDLs, and if we disapprove, we are required to develop a replacement TMDL within 30 days. (b) (5)

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Next Steps

A briefing on the proposed TMDL decisions for the RA is currently scheduled for May 21st. The AAOW will be given an opportunity to participate in the RA briefing. In addition, the Region will coordinate with HQ OWOW staff on needed background/briefing materials for AAOW. Once final decisions have been made on the TMDL, the Region will need to work quickly with HQ and the State on the disapproved segments to determine how replacement TMDLs will be developed.

¹ Marine segments (Phase 2, Budd Inlet) are planned for completion in 2020.

From: [Havard, James](#)
To: [Hunter, Christopher](#)
Subject: RE: ACTION BY NOON THURSDAY: Update needed for Note/Paper for Dave Ross/OW-IO re: Deschutes WA TMDLs -- potential disapprovals
Date: Wednesday, May 16, 2018 3:52:59 PM
Attachments: [Deschutes TMDL background 5-15-18 jjh.docx](#)

Thanks Chris. OK with these edits? We'll need to hear back from R10 before including the part about DR being invited to the RA briefing before including this language.

From: Hunter, Christopher
Sent: Wednesday, May 16, 2018 5:03 PM
To: Havard, James <Havard.James@epa.gov>
Subject: FW: ACTION BY NOON THURSDAY: Update needed for Note/Paper for Dave Ross/OW-IO re: Deschutes WA TMDLs -- potential disapprovals
Correct, updated version
Chris Hunter
202.566.1454
Watershed Branch, Office of Water
US Environmental Protection Agency

From: Wall, Tom
Sent: Tuesday, May 15, 2018 1:48 PM
To: Havard, James <Havard.James@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>
Cc: Goodin, John <Goodin.John@epa.gov>
Subject: ACTION BY NOON THURSDAY: Update needed for Note/Paper for Dave Ross/OW-IO re: Deschutes WA TMDLs -- potential disapprovals
John would like us to lightly update the paper and note below to reflect the latest from the court. I'll be on leave Thursday so just cc: me as it goes back to John. Thank you,
Tom Wall, Director
Watershed Restoration, Assessment and Protection Division
Office of Wetlands, Oceans and Watersheds
U.S. EPA
Wall.tom@epa.gov
202/564-4179

From: Wall, Tom
Sent: Thursday, May 03, 2018 2:31 PM
To: Goodin, John <Goodin.John@epa.gov>; Sandra Connors (<Connors.Sandra@epa.gov>
<Connors.Sandra@epa.gov>
Cc: Havard, James <Havard.James@epa.gov>; Monschein, Eric <Monschein.Eric@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>
Subject: Note for Dave Ross/OW-IO re: Deschutes WA TMDLs -- potential disapprovals
John – here is a note and paper you could send to Dave about R10's potential disapproval of a number of the Deschutes WA TMDLs:

Dave,

(b) (5)

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A large block of text is redacted with gray bars. The redaction covers approximately 10 lines of text. The first line is indented, while the subsequent lines are aligned with the left margin. The redacted text appears to be a list or a series of paragraphs.

We understand the RA is aware that his staff are likely to recommend disapproval of some of the TMDLs. However, he is not scheduled to be briefed in detail until late May, which means there won't be much time for dialogue with the RA after he is briefed before the June 29 deadline. In case you would like to talk to the RA sooner, we prepared the attached paper to provide more background information on the issue.

We can provide additional information if that would be helpful.